

## REMARKS

Claims 1-20 are pending. Claims 1-20 stand rejected. Claims 5 and 17 have been amended for clarity. Claims 1, 3, 5, 6, 9, 11, 12 and 17 have been amended to correct their status identifiers. Accordingly, no new matter is introduced by these amendments.

The following remarks are directed towards the Examiner's maintenance of his indefiniteness rejection as stated in his Advisory Action. It is Applicants understanding that if the Examiner's indefiniteness rejection falls, his remaining 102 rejections likewise fall, as all 102 references contain surfactants. Therefore, the present remarks are only directed towards the 112 rejection, with Applicants' maintaining their 18 November 2003 Reply to the 102 rejections.

### Reply to the Rejection of Claims 1-5 under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 1-5 as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. Specifically, the Examiner states in his Advisory Action that Applicants' request for reconsideration does not place the application in condition for allowance because -

[T]he applicants continue to argue that the material are "substantially free of surfactants, but claim 5 list surfactants in the Markush Listing. In the very least, this recitation should be omitted. Given the prior art, the examiner feels that the claims should be limited to "free of surfactants" in order to over come the prior art and the rejection made under 35 USC 112.

For the following reasons, Applicants strongly traverse the Examiner's rejection of claims 1-5 as being indefinite.

Applicants respectfully direct the Examiner's attention to the recent *Liquid Dynamics Corp. v. Vaughn Company, Inc.*, 2004 WL 102849 (Fed. Cir.). Therein the Federal Circuit noted that the "term 'substantial' is a meaningful modifier implying 'approximate' rather than 'perfect'" (*Id.*). The Court then referred to the *Cordis Corp. v. Medtronic AVE, Inc.* case, wherein the district court imposed a precise numeric constraint on the term "substantially uniform thickness." The Federal Circuit corrected the district court, noting that "the proper interpretation of this term was 'of largely or approximately uniform thickness' **unless something in the prosecution history imposed the 'clear and unmistakable disclaimer' needed for narrowing beyond this simple-language interpretation** (*Id.*, citing *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 13352, 1361 (Fed. Cir. 2003)(emphasis added)).

As previously noted by Applicants, p. 8, lines 19-21 of the present specification provides such a disclaimer. Therein it is stated that the aqueous polymer composition of the present application contains "essentially no stabilizing surfactants, *as opposed to a latex or emulsion polymer composition*" (emphasis added). The Examiner refers to U.S. Patent No. 6,337,359 to Diehl *et al.* ("Diehl") in support of his position that the "prior art teaches using very low amounts of surfactant". Diehl is directed towards a latex polymer composition. This latex composition requires a surfactant in the amount of about 0.05 to 2.0 wt %. Applicants note that a latex composition by definition requires some amount of surfactant. Applicants have clearly stated in their Specification that the polymer of the present invention, unlike a latex composition such as is taught by Diehl, does not require a surfactant. Accordingly, Applicants have narrowed the definition of 'substantially' in their application such that 'substantially no surfactants' is less than that taught by Diehl. For at least these reasons, the phrase 'substantially no stabilizing surfactants' is not indefinite.

Regarding claim 5, and likewise claim 17, those claims are amended herewith for clarity. Accordingly, claim 5 now clearly indicates that it refers to a formulation containing the polymer of claim 1, and claim 17 now clearly indicates that it refers to a substrate that has been coated with a film formed from the polymer of claim 1.

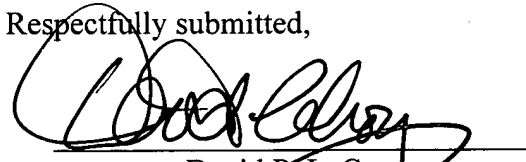
It is believed that these remarks overcome the Examiner's rejection of claims 1-5 as being indefinite. Withdrawal of that rejection is respectfully requested. It is further submitted that the above amendments and remarks overcome the Examiner's 102 rejections of the claims. Withdrawal of those rejections is respectfully requested. Allowance of the claims is believed to be in order, and such allowance is respectfully requested.

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